

Regular Session, 2009

HOUSE BILL NO. 759

BY REPRESENTATIVES GREENE, BALDONE, HONEY, RICHMOND, RITCHIE, AND  
JANE SMITH

TAX CREDITS: Creates the Venture Fund Tax Credit Program to promote investment in  
early-stage technology companies

1 AN ACT

2 To enact R.S. 47:6035, relative to state tax credits; to establish the Venture Fund Tax Credit  
3 Program; to authorize Louisiana public retirement systems and plans to participate  
4 in the program; to provide for the participation of Louisiana university endowments  
5 in the program; to provide for certain tax benefits for such systems, plans, and  
6 endowments; to provide for definitions; to require reporting; to authorize  
7 rulemaking; and to provide for related matters.

8 Notice of intention to introduce this Act has been published  
9 as provided by Article X, Section 29(C) of the Constitution  
10 of Louisiana.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 47:6035 is hereby enacted to read as follows:

13 §6035. Venture Fund Tax Credit Program

14 A. The legislature finds that:

15 (1)(a) There is an insufficient amount of venture capital funds available in  
16 Louisiana for the creation of early-stage technology companies.

17 (b) Venture capital funds are necessary to achieve economic benefit from the  
18 transfer of university research into homegrown economic development potential for  
19 purposes of early-stage technology companies.

20 (2) This Section is enacted to achieve the following purposes:

21 (a) To encourage the start of early-stage technology companies.

1           **(b) To induce companies to commercialize technology produced at a**  
2           **Louisiana university and to locate and grow their businesses in Louisiana.**

3           **(c) To expand the economy of the state by enlarging its base of technology**  
4           **and research-based businesses.**

5           **(d) To increase the number of quality jobs available to an educated**  
6           **workforce so as to retain the presence of young persons educated at Louisiana**  
7           **colleges and universities.**

8           **(e) To assist in the effective transfer of university research into the private**  
9           **sector.**

10           **B. Definitions. For purposes of this Section, the following terms shall have**  
11           **the meaning provided herein, unless the context clearly requires otherwise:**

12                   **(1) "Department" means the Department of Economic Development.**

13                   **(2) "Louisiana public pension fund" means one of the following state public**  
14                   **retirement or pension systems, funds, or plans:**

15                           **(a) The Louisiana State Employees' Retirement System.**

16                           **(b) The Teachers' Retirement System of Louisiana.**

17                           **(c) The Louisiana School Employees' Retirement System.**

18                           **(d) The State Police Pension and Retirement System.**

19                           **(e) The Assessors' Retirement Fund.**

20                           **(f) The Clerks of Court Retirement and Relief Fund.**

21                           **(g) The District Attorneys' Retirement System.**

22                           **(h) The Firefighters' Retirement System.**

23                           **(i) The Municipal Employees' Retirement System of Louisiana.**

24                           **(j) The Municipal Police Employees' Retirement System of Louisiana.**

25                           **(k) The Parochial Employees' Retirement System of Louisiana.**

26                           **(l) The Registrars of Voters Employees' Retirement System.**

27                           **(m) The Sheriffs' Pension and Relief Fund.**

28                   **(3) "Louisiana university endowments" means restricted and unrestricted**  
29                   **funds held by a foundation to support a Louisiana public or private university.**

1           (4) "Louisiana wealth creating company" means a company with its principal  
2           place of business in Louisiana which is anticipated to, within a reasonable time after  
3           receipt of investment funding from a venture capital fund, have at least fifty percent  
4           of its total sales made to either out-of-state customers or buyers, in-state customers  
5           or buyers if the products or service is resold by the purchaser to an out-of-state  
6           customer or buyer for ultimate use, or to the federal government.

7           (5) "Net realized loss" means a situation wherein a pension fund or  
8           endowment, upon final distribution, receives less money from a venture capital fund  
9           than it invested. However, if upon final distribution, an endowment or pension fund  
10          participating in this program receives illiquid stock, a net realized loss can only be  
11          declared if the ownership of all such illiquid stock is transferred to the Louisiana  
12          Economic Development Corporation.

13          (6) "Venture capital fund" means a venture capital fund company or venture  
14          capital fund that has been certified by the Department of Economic Development to  
15          be a venture capital fund for purposes in the Venture Fund Tax Credit Program.

16          C. Program administration, certification of venture capital funds, and  
17          qualification of investments by Louisiana public pension funds and Louisiana  
18          university endowments.

19          (1) There is hereby established the Venture Fund Tax Credit Program,  
20          hereinafter referred to as the "program", for the purpose of granting refundable  
21          credits against Louisiana corporation income or corporation franchise tax liability,  
22          which tax credits may be received by Louisiana public pension funds, hereinafter  
23          referred to as "pension funds", and Louisiana university endowments, hereinafter  
24          referred to as "endowments", related to investments made in a venture capital fund,  
25          all for the promotion of investment in Louisiana wealth creating companies. The  
26          program shall be administered by the Department of Economic Development,  
27          hereinafter referred to as the "department". The secretary of the department shall  
28          consult with the secretary of the Department of Revenue in the administration of the  
29          program.

1           (2) The department shall promulgate rules in accordance with the  
2           Administrative Procedure Act as may be necessary to implement and administer the  
3           provisions of this Section, which rules shall, at a minimum provide for the following:

4           (a) Provisions whereby a venture capital fund company may be certified to  
5           be designated as a venture capital fund for purposes of the Venture Fund Tax Credit  
6           Program;

7           (b) Limitations on the amount of investment a venture capital fund may  
8           receive from pension funds and endowments;

9           (c) Parameters governing conflicts of interest created by the investment of  
10          money by a pension fund or endowment into a venture capital fund; and

11          (d) Procedure for establishing a net realized loss according to General  
12          Accepted Accounting Procedures.

13          (3) The department shall qualify and certify a venture capital fund company  
14          to be a venture capital fund for purposes of the program. The criteria for  
15          certification shall be established by rule; however, at a minimum, the qualifications  
16          for such certification shall require that the venture capital fund:

17          (a) Have an office within Louisiana, the staff of which shall include a full-  
18          time investment professional that is a resident of Louisiana.

19          (b) Agree to make a good faith effort to make investments in early-stage  
20          Louisiana wealth creating companies.

21          (c) Agree to provide an annual report to the department regarding the  
22          number of investments made and the status of each investment.

23          (d) Agree to limit the investment of any individual pension fund or  
24          endowment to no more that twenty-five percent of the total investment in the venture  
25          capital fund.

26          (e) Agree to limit its annual management fee to two and one half percent of  
27          the monies invested by a pension fund or endowment.

28          (4) The department shall qualify investments made by pension funds and  
29          endowments which may be eligible for tax credits. No more than fifty percent of the

1 investment made in a venture capital fund shall be eligible for tax credits. The  
2 conditions for qualification shall include:

3 (a) The investment in the venture capital fund was an at risk, unsecured  
4 investment made on or after August 15, 2009.

5 (b) The pension fund or endowment has incurred a net realized loss on its  
6 investment. The recognition of a net realized loss may not occur until five years  
7 after the date of the pension fund's or endowment's initial investment in the venture  
8 capital fund.

9 (5) The department shall provide for an annual report of investment made  
10 by pension funds and endowments in venture capital funds, as well as all of the  
11 investments made by venture capital funds in Louisiana wealth building companies.  
12 The annual report may also include any other information which may be required by  
13 the department.

14 (6) Each venture capital fund shall report to the department immediately  
15 upon its determination that there is a likelihood that a pension fund or endowment  
16 has incurred a net realized loss due to its investment in the venture capital fund.

17 D. Tax Credit. (1) Except as provided in Paragraph (2) of this Subsection,  
18 a pension fund or endowment may be granted a credit against any Louisiana income  
19 tax, in the amount approved by the secretary of the department for the amount of its  
20 qualified net realized loss sustained as a result of an investment in a venture capital  
21 fund.

22 (2)(a) The credits approved by the department shall be granted at the  
23 following rates:

24 (i) One hundred percent of the net realized loss up to three million dollars;

25 (ii) Eighty percent of the net realized loss between three million and six  
26 million dollars, and;

27 (iii) Sixty percent of the net realized loss in excess of six million dollars.

28 (b) The total tax credits granted in any calendar year shall not exceed twenty  
29 million dollars. The department shall by rule establish the method of allocating

1        available tax credits, including but not limited to a first-come, first-served system,  
2        reservation of tax credits for a specified time period, or other method which the  
3        department, in its discretion, may find beneficial to the program. In the event that  
4        the total amount of credits granted in any calendar year is less than twenty million  
5        dollars, any residual amount of unused credits shall carry forward for use in  
6        subsequent years and may be granted in subsequent years in addition to the twenty  
7        million dollar limit for each year.

8                (3) After determining the amount of investments made by a pension fund or  
9        endowment which qualify for receipt of tax credits, the department shall issue a tax  
10       credit certificate.

11               (4) After issuance of the tax credit certificate, the department shall submit  
12       the tax credit certificate to the Department of Revenue on behalf of the investor who  
13       earned the tax credits. Upon receipt of the tax credit certificate and any necessary  
14       additional information, the secretary of the Department of Revenue shall make  
15       payment to the investor in the amount to which he is entitled from the current  
16       collections of the taxes collected pursuant to Chapter 1 of Subtitle II of this Title, as  
17       amended.

18               (5) The department shall maintain a list of the tax credit certificates issued.

19               E. Penalties for fraud. (1) Any person making an application, a claim for  
20       a venture fund tax credit, or any report, return, statement, or other instrument or  
21       providing any other information pursuant to the provisions of this Section who  
22       willfully makes a false or fraudulent application, claim, report, return, statement,  
23       invoice, or other instrument or who willfully provides any false or fraudulent  
24       information, and any person who willfully aids or abets another in making such false  
25       or fraudulent application, claim, report, return, statement, invoice, or other  
26       instrument, shall be guilty, upon conviction, of a felony and shall be punished by the  
27       imposition of a fine of not less than one thousand dollars and not more than fifty  
28       thousand dollars, or imprisoned for not less than two years and not more than five  
29       years, or both.

- 1                   (2) Any person convicted of a violation of this Section shall be liable for the  
 2                   repayment of all credits which were granted to the pension fund or endowment.  
 3                   Interest shall be due on such amounts at the rate of fifteen percent per annum.

### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Greene

HB No. 759

**Abstract:** Establishes the Venture Fund Tax Credit Program to promote investment in early-stage technology companies by La. public pension and retirement systems and La. university endowments.

Proposed law establishes the Venture Fund Tax Credit Program, hereinafter referred to as the "program", for the purpose of granting refundable credits against any La. income tax liability to be received by La. public pension funds and La. university endowments related to investments made on or after Aug. 15, 2009 in a venture capital fund, all for the promotion of investment in La. wealth creating companies. The program shall be administered by the Dept. of Economic Development, hereinafter referred to as the "dept.". The secretary of the department shall consult with the secretary of the Dept. of Revenue in the administration of the program. Proposed law also provides for legislative findings and intent.

Proposed law provides for definitions of "venture capital fund", "La. public pension fund", "La. wealth building company", "La. university endowment" and "net realized loss".

Proposed law requires that in order to claim a net realized loss after the final distribution of a venture capital fund, any illiquid stock distributed to a pension fund or endowment must be transferred to the La. Economic Development Corp.

Proposed law authorizes the department to promulgate rules in accordance with the Administrative Procedure Act as may be necessary to implement and administer the provisions of proposed law. Requires the inclusion of certain policies within the rules concerning investments and activities of venture capital funds.

Proposed law requires reporting regarding investments made by La. public pension funds and La. university endowments and venture capital funds.

Proposed law authorizes the granting of credits by the secretary of the dept. to a pension fund or endowment that has incurred a net realized loss on its investment after five years. The credits approved by the department shall be granted at the following rates: 100% of the net realized loss up to three million dollars, 80% of the net realized loss between three million dollars and six million dollars, and 60% of the net realized loss in excess of six million dollars.

Proposed law limits the total tax credits granted in any calendar year to \$20 million. The department is authorized to establish by rule the method of allocating available tax credits. In the event that the total amount of credits granted in any calendar year is less than \$20 million, any residual amount of unused credits shall carry forward for use in subsequent years and may be granted in subsequent years in addition to the \$20 million limit for each year. The department is required to maintain a list of the tax credit certificates issued.

Proposed law requires the department to submit tax credit certificates to the Dept. of Revenue on behalf of the investor who earned the credit. The secretary of the Dept. of Revenue is authorized to make payment from current collections to the investor in the amount to which he is entitled in accordance with the provisions of present law.

Proposed law provides for penalties for fraud regarding participation in the program.

(Adds R.S. 47:6035)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the engrossed bill.

1. Adds requirement that in the event a pension fund or endowment, upon final distribution of a venture capital fund, receives illiquid stock, then a net realized loss can only be declared if the ownership of all such illiquid stock is transferred to the La. Economic Development Corp.
2. Limits the qualification of investments made in venture capital funds to those investments made on or after Aug. 15, 2009.
3. Deletes applicability of credit to franchise taxes.
4. Adds provisions for the disposition of tax credit certificates and payment of investors by the Dept. of Revenue.
5. Deletes the 10 year limitation on the use of the tax credit.